IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1225

JOHN R. GAGNON, Warden,
Petitioner,

- v. -

GERALD H. SCARPELLI,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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GERALD H. SCARPELLI v. GAGNON

2 CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

12/16/68 Petition for a writ of habeas corpus (received on 11/22/68)

12/18/68 Order (KPG) directing respondent to file a return to the petition not later than 1/2/69, showing cause, if any, why the writ should not issue and certifying the true cause of the detention.

1/3/69 Response to Petition for Writ of Habeas Corpus.

1/16/69 Traverse to Show Cause Order.

2/19/69 Pre-trial conference (JWR) Stipulation of Facts to be filed by 3/4/69. Briefs ordered. Oral Argument set on 3/28/69 at 3:00 PM.

3/5/69 Petitioner's Brief.

3/6/69 Petitioner's Report Pursuant to Final Pre-Trial Order.

3/17/69 Respondent's Brief.

4/9/69 Petitioner's Reply Brief.

7/11/69 Petitioner's Letter Brief re Mootness.

8/4/69 Petitioner's Statement of Facts.

8/19/69 Respondent's amendment to statement of facts.

9/21/70 Opinion and Order (JWR) that application for writ of habeas corpus be granted, that the issuance of the writ be stayed for a period of 30 days from this date to enable Wis. Court to hold a hearing on petitioner's probation revocation, if it so desires, etc.

9/29/70 Motion of respondent for a Certificate of Probable Cause to appeal 9/21/70 Decision, to the U. S. Court of Appeals, 7th Circuit.

10/1/70 Certificate of Probable Cause granted (JWR).

10/9/70 Respondent's Noticeof Appeal from order entered on 9/21/70. (copy mailed to Shellow, Shellow & Coffey, 660 E. Mason St. Milw. Wis. on 10/9/70)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Gerald H. Scarpelli)
19635-A)
Full name and prison number)
(if any) of Petitioner) Case No. *68-C-387*
vs.) (To be supplied by
John R. Gagnon) the Clerk of the
Name of Respondent) District Court)

PETITION FOR WRIT OF HABEAS COPRUS
Filed December 16, 1968

* * *

4 4. The date upon which sentence was imposed and the terms of the sentence:

(a) July 9, 1965 - 15 years confinement in the Wisconsin State

(b) Reformatory at Green Bay, said sentence was stayed and I was'

(c) placed on seven (7) years probation.

* * *

5 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) I was not given a hearing of any kind before a judge or magistrate of any kind to this day, to have reasons presented and proven as to why my probation should be revoked.

(b) I was not afforded the right to counsel at any probation hearing.

(c) I was not afforded the rights of probation under the laws of the state of Illinois in which I was residing.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Section 1 of the Fourteenth Amendment of the Constitution of the United States: "Nor shall any state deprive

any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(b) The Sixth Amendment of the Constitution of the United States: "In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense.

6 (c) Chapter 57 Wisconsin State Statutes: 57.13 (2), "That each receiving state (Ill.) will assume the duties of visitation of and supervision over probationers or parolees or any sending state (Wis.) and in the excercise of those duties will be governed by the same standards that prevail for its own probationers and parolees. Under the probation laws of Illinois, I would have definitely had counsel and a hearing before a judge and confronted with the charges of my probation violation. I was not afforded any such rights, I was arrested at my place of employment in Illinois, and forcibly and bodily carried by Wisconsin authorities across the state line into Wisconsin, directly to prison.

* * *

8 *Gerald H. Scarpelli,* being first sworn under oath, presents that he has subscribed to the foregoing petition and does state that the information therein is true and correct to the best of his knowledge and belief.

/s/ Gerald H. Scarpelli
Signature of Affiant

[Jurat Omitted in Printing]

14 RESPONDENT'S RESPONSE TO PETITION

Filed January 3, 1969

[Caption omitted in printing]

* * *

FIRST DEFENSE

The petition fails to state a claim against the respondent upon which relief can be granted.

SECOND DEFENSE

1. Petitioner was convicted of armed robbery in violation of sec. 943.32 (1) (b) and (2), Wis. Stats., on July 9, 1965, in the county court of Racine county, Branch II, Honorable Howard J. DuRocher, judge presiding, and was thereupon sentenced to the Wisconsin State Reformatory at Green Bay, Wisconsin, for an indeterminate term of not more than 15 years, execution whereof was thereupon stayed and petitioner was placed on probation for a period of 7 years, as
15 more fully appears from the annexed certified copy of the Order of Probation and of the Information marked Exhibits "A" and "B" respectively and made a part hereof.

2. On July 9, 1965, petitioner signed the Parole Agreement and a Travel Permit and Agreement to Return, copies of which marked Exhibits "C" and "D" are hereto annexed, and on August 5, 1965, after petitioner had returned to Illinois pursuant to the Travel Permit, his supervision was accepted by the Adult Probation Department of the circuit court of Cook county, Illinois, pursuant to the interstate compact for out-of-state parolee supervision, otherwise known as the "Uniform Act for Out-of-State Parolee Supervision" (sec. 57.13, Wis. Stats.) as shown by the letter of August 5, 1965, a copy of which marked Exhibit "E" is hereto annexed and made a part hereof.

3. Pursuant to said compact, all formalities of extradition are waived with reference to persons being supervised in other states under its provisions; and therefore petitioner's return to Wisconsin without extradition was lawful.

THIRD DEFENSE

4. On August 20, 1965, petitioner's probation supervisor recommended to the State Department of Public Welfare that petitioner's probation be revoked by reason of his association with known criminals and his involvement in a burglary on August 5, 1965. On the same day the district administrator concurred in said recommendation and on August 27, 1965, the chief of probation and parole services made the same recommendation, all as more fully appears from the case history review, a copy of which marked Exhibit "F" is hereto
16 annexed and made a part hereof; that on September 1, 1965, the said Department made an order revoking his said probation, a copy of which marked Exhibit "G" is hereto annexed and made a part hereof and on September 5, 1965, petitioner was received at the Wisconsin State Reformatory pursuant to his said sentence as shown by the Acknowledgement of Admission to the Institution, a copy of which marked Exhibit "H" is hereto annexed and made a part hereof.

5. The said revocation proceedings were made pursuant to the law of Wisconsin which provides for administrative revocation of probation without a hearing (sec. 57.03 (1), Wis. Stats.); the file of the Department contains ample reliable evidence of petitioner's violation of his probation sufficient to sustain the administrative action revoking it consisting in part

of a transcript of a statement given by petitioner on August 5, 1965, to Mr. Robert J. Smart, an Assistant State's Attorney of Cook county, Illinois, marked Exhibit "I" and annexed hereto, and a newspaper clipping relating the circumstances of the burglary taken from the Chicago Tribune of August 6, 1965, containing a photograph of petitioner identified as one of the burglars captured at the scene, a copy of which marked Exhibit "J" is hereto annexed and made a part hereof.

FOURTH DEFENSE

6. Under the law of Wisconsin the courts do not have inherent jurisdiction to stay execution of sentence and grant pro-
17 bation, but their authority to do so is dependent upon the existence of statutes authorizing the same (*Drewniak v. State ex rel. Jacquest*, (1942) 239 Wis. 475, 1 N. W. 2d 899); having applied for and accepted the benefits of such statute, petitioner is estopped to contest its validity in order to escape its burdens. He accepted a form of probation subject to administrative revocation without a hearing and he cannot now be heard to complain that his constitutional rights were thereby in any manner violated.

Dated at Madison, Wisconsin, this 2nd day of January, 1969.

BRONSON C. LA FOLLETTE
Attorney General

/s/ Wm. A. Platz
WILLIAM A. PLATZ
Assistant Attorney General

Attorneys for Respondent.

Post Office Address:

114 East, State Capitol
Madison, Wisconsin 53702

19 Exhibit A - Certified Copy of SENTENCE AND ORDER OF PROBATION

STATE OF WISCONSIN
COUNTY COURT *RACINE* COUNTY

STATE OF WISCONSIN *19635-A*

vs. SENTENCE IMPOSED AND STAYED *1107 7-15-65 35*

GERALD H. SCARPELLI
Defendant

At a *Reg. April '65* term of this court, held at the city of *Racine* in the county of *Racine,* Wisconsin, the above named defendant, hereinafter referred to as the aforesaid, was duly convicted of the offense of *"ARMED ROBBERY"* in violation of Sec. *943.32 (1) (b) (2)* of the Wisconsin Statutes, and sentenced to confinement in the *Wisconsin STATE REFORMATORY* at *Green Bay, Wisconsin,* Wisconsin, for the period of *fifteen (15) years;* beginning this day at noon, and it appearing to the satisfaction of this court that the aforesaid is eligible for probation pursuant to the provisions of Chapter 57 of the Statutes of the State of Wisconsin:

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

1st That execution of the aforementioned judgment and sentence be stayed as provided in Chapter 57 of the Statutes:

2nd That the aforesaid be and is hereby placed on probation for the period of *seven (7) years* in the custody and control of the State Department of Public Welfare, subject to the rules and orders of said Department;

3rd That as a condition of probation the aforesaid shall make the following payments, in such manner as directed by the State Department of Public Welfare:

Restitution $ Costs $20.83 Support $

He will pay the costs of those proceedings and perform other conditions of his probation as may be imposed upon the defendant by his supervising agent. In the event of his failure to meet the conditions of his probation he will stand committed under the sentence all ready imposed.

4th That the sheriff of said county is hereby ordered and directed to deliver the aforesaid into the custody of the State Department of Public Welfare upon the direction of said Department;

5th That a certified copy of this order be filed in the office of the State Department of Public Welfare together with a certified copy of the aforesaid's probation questionnaire.

Dated *July 9*, 1965

By the Court */s/ Howard J. DuRocher*
County Judge - *Br. II*

Exhibit "A"

20 Exhibit B - INFORMATION

STATE OF WISCONSIN
COUNTY COURT — RACINE COUNTY
BRANCH No. 2

STATE OF WISCONSIN

vs.

GERALD H. SCARPELLI
Defendant

STATE OF WISCONSIN)
) SS.
County of Racine)

I, *JOHN PEYTON,* District Attorney for Racine County, State of Wisconsin, do hereby inform the Court that on the *5th* day of *April* A.D. 1964, at the *Township of Burlington* and County of Racine, Wisconsin, said defendant,

Did then and there feloniously, unlawfully, and intentionally, while armed with a dangerous weapon, to-wit: a revolver, and by threatening the imminent use of force against C. Leslie Reddick, compel the said C. Leslie Reddick to acquiesce in the taking and carrying away of his property, contrary to the form of the Statute, Section *943.32 (1) (b) (2)* in such case made and provided, and against the peace and dignity of the state of Wisconsin.

Dated at Racine, Wisconsin, this *20th* day of *July,* A.D. 1964.

/s/ John Peyton
District Attorney,
Racine County, Wisconsin

21 **Exhibit C - AGREEMENT**

In consideration of Probation or Parole being granted me, I agree to the following:

1. I will make a sincere attempt to avoid all acts which are forbidden by law and contrary to public welfare or my own best interests.

2. I will, to the best of my ability, take advantage of the opportunitites offered me by probation or parole; I will practice temperance, conduct myself honestly, and assume my obligations as a citizen and as a member of the community in which I live.

3. I will keep the Probation and Parole Agent informed of my whereabouts and activities at all times and I will submit such reports as may be required.

4. I will secure advance approval from the Probation and Parole Agent, in writing if practicable, if at any time I wish to:

    a. Purchase or operate a motor vehicle.
    b. Incur debts whether by borrowing money or installment buying.
    c. Take on additional responsibilities, such as marrying.
    d. Change employment or place of residence.
    e. Leave the state.
    f. Own or carry firearms or other weapon.

5. If I prove myself unsuited to supervision, I will hold myself ready to be placed in the institution to which I was committed, returned to the court which placed me on probation, or to the institution from which I was paroled.

6. I will be guided by such specific instructions as may be issued by the Probation and Parole Agent with regard to companions, hours, intoxicants, medical attention, family responsibilities and support of self, court obligations, or other special restrictions as follows:

Date *7-9-65*

Signed */s/ Gerald Scarpelli*

23 Exhibit E - LETTER

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
ADULT PROBATION DEPARTMENT
CRIMINAL COURT BUILDING
2600 So. California Ave.
Chicago, Ill. 60608
Bishop 7-8016

WILLIAM D. MEYERING
CHIEF PROBATION OFFICER
VAL GOLES
SECRETARY

DEPUTY CHIEFS
LAWRENCE BREEN
JOHN M. HAAS
LEONARD J. PRYSTALSKI

IN REPLY PLEASE
REFER TO:

August 5, 1965

Mr. Sanger B. Powers
Interstate Compact Administration
P. O. Box 669
Madison, Wisconsin

Re: Gerald Scarpelli
Wisc. Prob. 19635-A

Dear Sir:

The above named subject resides with his wife and two children at 6904 W. Roosevelt Road, in Oak Park, Illinois. He is employed by the Park Trucking and Supply Company at 2025 Railroad Avenue in Glenview, Illinois. We will accept this case for supervision. Thanking you for your cooperation we remain.

Very truly yours,
William D. Meyering
Chief Probation Officer

By */s/ Leonard J. Prystalski*
Leonard J. Prystalski
Deputy Chief Probation Officer

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Exhibit F - CASE HISTORY REVIEW

* * *

* * * Action Recommended:

REVOCATION OF PROBATION

* * *

Recommendation submitted for the following reasons:*

The aforementioned has shown himself unsuitable for probation in that he:

1. Has associated with known criminals, in direct violation of his probation regulations and his supervising agent's instructions;
2. While associating with a known criminal, namely Fred Kleckner, Jr., was involved in, and arrested for, a burglary on the evening of 8/5/65 in Deerfield, Illinois.

Date *8/20/65* Submitted by *Thomas L. Meyer* Area No. *1107*

* * *

SECTION 2—ADMINISTRATOR'S ACTION

Recommendation:

Same as above.

Date *8/20/65* District *Racine-Kenosha* Administrator
/s/ R. M. Larsen J.J. Nuter for R.M. Larsen

SECTION 3—SPACE BELOW TO BE FILLED OUT AT CENTRAL OFFICE

Costs ordered *$2.83* Restitution ordered Support ordered

Costs unpaid *$2.83* Restitution unpaid Support due

Balance to credit with cashier Bonds on deposit

SECTION 4—ADMINISTRATIVE ACTION

Administrative Action: Revocation of probation is recommended for the following reasons:

1. The aforesaid has associated with known criminals, in direct violation of his probation regulations and his supervising agent's instructions;

2. The aforesaid while associating with a known criminal, namely Fred Kleckner, Jr., was involved in, and arrested for, a burglary on the evening of August 5, 1965 in Deerfield Ill.

Date *August 27, 1965*

By Delmar Huebner, Chief
Probation & Parole Services
Probation & Parole Services

25 Exhibit G - ORDER REVOKING PROBATION

THE STATE OF WISCONSIN: BEFORE THE STATE DEPARTMENT OF PUBLIC WELFARE

IN THE CASE OF:

Gerald H. Scarpelli Prob. #19635-A

IT APPEARING that GERALD H. SCARPELLI, hereinafter referred to as the aforesaid, was on the 9th day of July, 1965, convicted of the offense of Armed Robbery in violation of Section 943.32 (1) (b) (2) of the Statutes of the State of Wisconsin in the County Court, Branch II, of Racine County and sentenced to the Wisconsin State Reformatory for a term of fifteen years and that execution of the sentence in this case was stayed and the aforesaid was placed on probation for a term of seven years under the provisions of Chapter 57 of the Statutes;

IT FURTHER APPEARING in the reports submitted by the Division of Corrections that the aforesaid has not conducted himself in accordance with the rules and regulations of the State Department of Public Welfare with reference to persons placed on probation in that the aforesaid has violated said rules by the following:

1. The aforesaid has associated with known criminals, in direct violation of his probation regulations and his supervising agent's instructions;
2. The aforesaid while associating with a known criminal, namely Fred Kleckner, Jr., was involved in, and arrested for, a burglary on the evening of August 5, 1965 in Deerfield, Illinois.

IT IS NOW ORDERED that in accordance with the provisions of Chapter 57 of the Statutes the probation of the aforesaid be and hereby is revoked with the effective date of violation being August 5, 1965;

IT IS FURTHER ORDERED THAT the aforesaid be taken into custody and conveyed to the Wisconsin State Reformatory and that the Warden of said institution is hereby authorized and directed to receive the aforesaid and there keep him until discharged pursuant to law.

STATE DEPARTMENT OF PUBLIC WELFARE

/s/ Wilbur J. Schmidt
Director

Dated: SEP 1 - 1965

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Exhibit H - ACKNOWLEDGMENT OF ADMISSION TO INSTITUTION

TO WHOM THIS MAY CONCERN:

This is to certify that *Gerald H. Scarpelli Prob. #19635-A* whose *probation* was revoked on *September 1, 1965* by the State Department of Public Welfare of Wisconsin was received at this institution on *SEP 4 1965*, 19 , to serve the sentence applicable to the order appended hereto.

REMARKS:

/s/ Michel A. Skaff [*Initials*]
Warden, Superintendent or Jailer

WISCONSIN STATE REFORMATORY
Name of Institution

Date *SEP 5, 1965*

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27 Exhibit I - STATEMENT OF GERALD SCARPELLI, AUGUST 6, 1965, COMMENCING APPROXIMATELY 3:15 P.M.

PRESENT:

ROBERT J. SMART
Assistant State's Attorney

Lt. Glenn KOETS
Deerfield Police Department

William J. Wood, Jr.
Deerfield Police Department

Suzanne Abear
Secretary in the State's Attorney's Office

Questions by Mr. Smart: Will you state your name please?
A. Gerald Scarpelli.
Q. Spell your last name?
A. SCARPELLI.
Q. What is your address?
A. 6904 West Roosevelt Road.
Q. In what town?
A. Oak Park, Illinois.
Q. What is your age?
A. Twenty-six.
Q. Are you married?
A. Yes.
Q. What is your wife's name?
A. Nancy Lynn.

Q. Are you employed?

A. Yes.

Q. Where are you employed?

A. Park Trucking and Supply.

28 Q. My name is Mr. Smart. I am an Assistant State's Attorney. This is Lt. Koets of the Deerfield Police Department, and this is Officer William Wood of the Deerfield Police Department, and the lady here is Mrs. Abear, a secretary in the office. Do you understand that Mrs. Abear is taking our conversation down in shorthand?

A. I do.

Q. Do you understand that you have a right to remain silent; that is, you do not have to answer my questions?

A. I do.

Q. Do you understand that anything you say may be used against you in a Court of Law?

A. Yes.

Q. You have a right to legal counsel. Do you wish legal counsel at this time?

A. No.

Q. Has there been any promises made to you to induce you to give us this statement?

A. No, sir.

Q. Do you understand that if any promises were made to you they would not be binding upon this Office or the Court.

A. Yes.

Q. Were you involved in a burglary this morning, August 5th, 1965?

A. I was.

Q. Where was this burglary?

A. On Wilmot Road in Deerfield.

Q. Was anybody with you?

A. Yes.

Q. Who?

A. Fred Kleckner, Jr.

Q. What time was this burglary?
A. I don't know - just before 12:00 - 11:00 A.M.
29 Q. In the morning?
A. A. M.
Q. What time did you meet Mr. Kleckner prior to 11:00 A.M.?
A. 9:00 this morning.
Q. Where did you meet him?
A. He picked me up at my house.
Q. Was he driving?
A. Yes.
Q. What kind of automobile was he driving?
A. '59 Chevie.
Q. Two-door, four-door?
A. Four door.
Q. Then what did you do, if anything?
A. At 9:00, he picked me up and we drove—we got on the toll road. We got off on 22 and drove into Deerfield and then we drove around that area at Wilmot Road and North and picked names off mailboxes.
Q. How many names?
A. Six or eight names.
Q. Do you remember any of the names?
A. No, sir, I don't, except this one.
Q. By this one, you mean which one?
A. Rustman.
Q. What did you do then, if anything?
A. Then we went to a restaurant on 22 in Half Day and we looked names up in a phone book and called the numbers we did get—the one that didn't answer was Rustman.
Q. What time did you make the calls?
A. Before 11:00. 10:30.
Q. Do you remember the name of the restaurant?
A. Polly's Cafe.
Q. Then what did you do—if anything?

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A. We left the restaurant and drove to Rustman's house on Wilmot Road.

Q. Who was driving?

A. Fred.

Q. When you got there, what did you do?

A. I got out of the car and walked to the door and Fred went to park the car. I rang the bell. There was no answer. Then Fred walked up to the house with me.

Q. Then what happened?

A. He brought the bar and the gloves, opened the screen door. Then Fred broke the door off.

Q. How?

A. Just pried it open.

Q. Then what happened?

A. Fred walked to the bedroom and I walked to the rear bedroom and the portable T.V. I picked up. It was on a stand.

Q. What kind of T.V. was it?

A. I don't remember, but it was a brand new one.

Q. Then what happened?

A. Put the T.V. in the hallway, looked in jewelry boxes and then Fred looked out the window and saw the police cars.

Q. What window?

A. I don't know what window—the front of the house.

Q. What did he say to you?

A. He said, there's cops outside. I asked where the back door was, and the next thing I knew, he jumped through the window and then I followed him through.

Q. What was the reason for entering this house?

A. We were going to burglarize it for merchandise or money.

Q. Are you saying you were going to steal objects from the house?

A. Yes.

31 Q. Can you describe the outside of the house?

A. No, I can't. Just a white house.

Q. Was it two story?

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Q. Brick, wood, siding?
A. Think it was wood.
Q. It was white, you say?
A. Yes.
Q. As you entered the house, what room did you go into?
A. There's a hallway when you walk through the door—right down the hallway to the bedroom.
Q. Did you go in any other rooms besides the bedroom?
A. No, we weren't around there that long.
Q. Can you describe the bedroom?
A. All I can remember is the dresser.
Q. What do you remember about the dresser?
A. The jewelry box was on top.
Q. How many jewelry boxes were there?
A. Two, I think. And the T.V. near the door on a stand.
Q. Did you take any jewelry?
A. No.
Q. How long were you in the house?
A. About three minutes maybe—maybe not even that long.
Q. What happened after you jumped through the window?
A. We were in the back yard. There was police by the far corner of the house. He hollered for me to stop. I ran into the bushes.
Q. What happened then?
A. That's it.
Q. You were found in the bushes?
A. I went a little ways then they found me.
32 Q. What time did you enter the house approximately?
A. Around 11:00.
Q. Do you remember what direction the house faces?
A. Well, I'm mixed up in directions—it faces Wilmot Road. It's on a corner.
Q. You mentioned the car was parked on North Avenue?
A. North and Wilmot Road.

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Q. Had you and Kleckner made plans about the burglary that day?

A. I don't know what you mean.

Q. Had you talked about it this date?

A. Yes, we did.

Q. When?

A. Talked about it this morning. He called me up.

Q. What did he say?

A. Not too much. He just asked me if I wanted to go out. I said yes.

Q. Has this statement been given freely by you?

A. Yes, sir.

Q. Has there been any threats made against you or coercion used to give this statement?

A. No.

Q. Has there been any promises made to give this statement?

A. No.

Q. How have you been treated by the Deerfield Police?

A. Good.

Q. Did they give you a meal—lunch—dinner?

A. Yes.

Q. How have you been treated by myself?

A. Very good.

Q. Do you have any complaints about myself or the police officers or the State's Attorney's Office?

A. No, sir.

33 Exhibit J - NEWS ARTICLE, CHICAGO TRIBUNE, AUG. 6, 1965

BURGLAR SHOT AS TWO FLEE HOME

Smash Window in Attempt to Escape

Two burglars plunged thru a thick glass window of a home in Deerfield yesterday in an attempt to escape policemen who responded to a burglar alarm and trapped them in

One of the men was shot in the back and wounded critically when he ignored police warnings to halt. The other escaped into a nearby field and was captured an hour later.

Police Use Planes

Police of eight other communities as well as sheriff's police and state police joined Deerfield police in the search for the man who fled. Planes provided by sheriff's police and state police also were used in the search.

Fred Kleckner Jr., 31, of 1315 S. Home av., Berwyn, an ex-convict, was wounded when he ignored the warning of Policeman William Butler, Kleckner, was reported in critical condition in Highland Park hospital. His confederate was identified as Gerald Scarpelli, 26, of 6904 Rossevelt rd., Oak Park.

Kleckner and Scarpelli pried open a rear door at the home of Jacob H. Rustman of 1555 Wilmot rd., Deerfield, and entered the building unaware that opening the door had sounded a burglar alarm in the police station.

Police Guard Doors

Three minutes later Policemen Butler and Allan Cramer arrived, stationed themselves at the rear and front doors, and called to the men inside to come out.

Instead, Kleckner and Scarpelli dived headlong thru an insulated window, with glass three-eighths of an inch thick, on the side of the six-room ranch type home.

When Scarpelli ran into the field, Butler and Cramer radioed for help. Police units responded from Lake Forest, Highland Park, Northbrook, Mundelein, Wheeling, Mill Creek, and Round Lake Beach, as well as Lake county deputies and state police.

Burglarized Before

Scarpelli was captured by Northbrook Policeman Jay Mills about two blocks from the Rustman home.

Lt. Glenn Koets of the Deerfield police said Rustman, who is president of the Jefferson Ice and Fuel company in Chicago, had the burglar alarm installed after $1,500 worth of jewelry and household goods was taken in a burglary Sept. 29, 1963.

Lt. Koets said that inside the Rustman home a television set had been moved to a door and jewelry boxes were found on beds where the burglars had placed them.

Police said Rustman was at work in Chicago and his wife, Eleanor, was at a beauty shop when the burglars entered the home.

The car used by Kleckner and Scarpelli was found parked two blocks from the Rustman home.

* * *

Members of Gang

Joseph Balzrina, Lake county sheriff's investigator, said that Scarpelli admitted that he and Kleckner were responsible for many burglaries in Lake county in the last 18 months.

Balzrina said they operated with five other men, all now in prison, as a gang that also staged burglaries in Cook, Du Page, and McHenry counties.

Kleckner served three years in the state penitentiary for armed robbery and was arrested last year, along with Scarpelli and another man, in connection with the $30,000 holdup of the Colonia club in Burlington, Wis., Scarpelli said he was on seven years probation for the Wisconsin holdup. Scarpelli was one of two men identified last year by an Oak Park woman

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34 [Photograph of 4 men]

Gerald Scarpelli, burglar captured after fleeing Deerfield home, shows policemen the cuts on hand and wrist he suffered when he and Fred Kleckner Jr. dashed thru picture window to evade police at doors of home.

* * *

36 PETITIONER'S TRANSVERSE [sic]
Filed January 16, 1969
[Caption omitted in printing]

The Petitioner above named, for a tansverse to the show cause order for a writ of habeas corpus answers as follows:

* * *

37 RETURN TO THE THIRD DEFENSE

4. On August 20, 1965, petitioner's probation supervisor recommended to the State Dept. of Public Welfare that petitioner's probation be revoked, strictly on heresay information. Illinois burglary charges were never proven against petitioner. He could have proven his innoncence of these Deerfield Ill. burglary charges in open court in Ill., but Ill. chose to drop these charges against him.

* * *

8 5.(b) If an unsigned statement given under extreme pressure, without counsel, and as a part of a deal with the police, and a newspaper story is the ample, reliable evidence of petitioner's probation violation, then respondent has a very weak and shaky case indeed. In other words, any police officer or citizen can at any time issue to the Wis. Welfare Dept. an inflammatory or deragatory statement against the petitioner, and petitioner will stand as in violation of his probation?

In the Chicago Tribune picture allegedly of this petitioner, showing cuts on hand and wrist; In actual and true fact, their was one small cut on petitioner's lower palm on the right hand, which was one day old on August 5, one day before the alleged burglary was to have taken place. Petitioner suffered this cut in a fall at work, and he so informed Deerfield authorities of this fact at the time of arrest on Aug. 5, 1965.

In the Chicago Tribune article where petitioner allegedly (admitted he and Kleckner were responsible for many burglaries in Lake County in the last 18 months) this statement is completly untrue and petitioner never made any such statement to any newspaper reporter or to any police officer, or to anyone. However Mr. Balzrina, Lake County sheriff's investigator, did in fact, himself make this statement to reporters. Mr. Balzrina also said petitioner operated with five other men in Cook, DuPage, and McHenry counties as a gang staging burglaries. What are these other burglaries and what are these other five men's names? Petitioner doesn't know and Mr. Balzrina doesn't know, but these types of stories were good publicity for Mr. Balzrina and they help sell many newspapers. None of these newspaper statements have been proven or used against petitioner in court, except by the Wis. Welfare Dept. to violate petitioner's probation.

In regards to the statement made by petitioner to Mr. Smart,
39 this statement is not signed by petitioner and therefore not worth the paper it is written on. Said statement was made as a part of a deal contrived by Mr. Balzrina, Lake County Sheriff's investigator, in return, Mr. Balzrina gave his solemn word that petitioner's name would not be printed in the newspapers as involved in the alleged burglary. That there would be no publicity of any kind, and the Wis. authorities would definitly not be notified as to a possible condition of probation violation.

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Mr. Balzrina was the second man to get his hands on petitioner after Northbrook Policeman Jay Mills came upon petitioner over two blocks from the scene of alleged burglary. Immediately upon seeing petitioner, Mr. Balzrina attempted to strike him with the stock of a shotgun, Mr. Balzrina was restrained by policeman Jay Mills. Mr. Balzrina made numerous threats of physical harm and in abuse in front of numerous witnesses. At this time Mr. Balzrina also said to petitioner he, Balzrina, knew that petitioner was involved in alleged burglary because Kleckner was involved in said burglary; therefore petitioner just had to be the other suspect.

Petitioner was taken to the Deerfield Police station where he was handcuffed to a chair causing his cut hand to bleed a little. Petitioner was slapped in the face twice by Mr. Balzrina, and threatened to be returned to Wisconsin to have his probation violated. Mr. Balzrina insisted and swore that the suspect caught in the yard of the Rustman home was Fred Kleckner Jr., and that said suspect was mortally wounded and in fact deceased at the time of interrogation by Balzrina. Lt. Koets and officer William Wood of the Deerfield police dept. also gave their word to petitioner that Kleckner was dead. Mr. Balzrina informed petitioner that he was in a position to send petitioner back to Wis. for 15 years imprisonment, if word of this burglary got out to the Wis authorities. Petitioner was not involved in the alleged burglary but because petitioner was in the neighborhood and a suspect, said petitioner was very nervous, worried and freightened. Petitioner was not allowed to make any phone calls, Mr. Balzrina told petitioner as long as no formal charge was placed against him, petitioner did not need any lawyer. Mr. Balzrina told petitioner if he would make a statement admitting the burglary and implicate Fred Kleckner Jr. who was dead, there would be no story of the burglary in any news media, then petitioner would have no

worry about Wis. authorities violating him. Mr. Balzrina told petitioner Deerfield would set a low bond on him and he could return to his family, and that petitioner would never be convicted of the burglary on such flimsy evidence in court. Mr. Balzrina gave his word and swore all the things he told petitioner were the God's truth. At the time petitioner thought the deal to be attractive since it would not hurt anybody, Kleckner was dead, according to Balzrina, and if an unsigned statement would keep Balzrina off petitioner's back and keep petitioner out of prison, petitioner was ready to say just about anything. Petitioner's statement to Mr. Smart is untrue and completely made up. If petitioner would have been quite able to prove his innocence of the burglary charge in court, and petitioner can still prove his innocence of the Deerfield burglary charge.

PETITIONER'S STATEMENT OF FACTS
(Filed August 4, 1969)
[Caption omitted in printing]

On July 9, 1965, the petitioner entered a plea of guilty to a charge of armed robbery in violation of §943.32 (1) (b) (2), Wis. Stat., and was sentenced on that date to an indeterminate term of not more than fifteen (15) years at the Wisconsin State Reformatory, Green Bay, Wisconsin, by the Honorable HOWARD J. DuROCHER, County Judge, Branch 2, Racine County, Wisconsin. Execution of the sentence was stayed and petitioner was placed on probation to the State Department of Public Welfare for a period of seven years.

On July 9, 1969, petitioner signed a "Parole Agreement and a Travel Permit and Agreement to Return." He thereupon returned to Illinois and on August 5, 1965, the Adult Probation Department of the Circuit Court of Cook County, Illinois, accepted petitioner's probation supervision pursuant to the Uniform Act for Out of State Parolee Supervision.

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(§57.13, Wis. Stat.) The agreement signed by the petitioner provided that he waived extradition to the State of Wisconsin from any jurisdiction in or outside of the United States and that he would not contest any effort by any jurisdiction to return him to the State of Wisconsin.

On August 20, 1965, petitioner's probation supervisior recommended to the State Department of Public Welfare that petitioner's probation be revoked by reason of his association with known criminals and his involvement in a burglary. On the same day the District Administrator con-
47 curred in the recommendation and on August 27, 1965, the Chief of Probation and Parole Services made the same recommendation. Pursuant to these recommendations the Director of the State Department of Public Welfare, Wilbur J. Schmidt, entered an order revoking the petitioner's probation on September 1, 1965. The recommendations for revoking probation were based [in part] on on a transcript of a statement allegedly given by the petitioner on August 5, 1965 to Mr. Robert J. Smart, Assistant State's Attorney, Cook County, Illinois, and newspaper clippings from the Chicago Tribune of August 6, 1965, pertaining to a burglary. (The reports recommending revocation, the transcript of the statement and the newspaper clippings are exhibits F, G, I and J of Respondent's Reply to Petition.)

Pursuant to the revocation order, the petitioner was picked up in Illinois at his place of employment on September 3, or September 4, 1965, and was transported to the Sheriff's Office, Niles, Illinois. Shortly thereafter, on the same day, the petitioner was transported to the Racine County Jail. Petitioner was held overnight in the Racine County Jail and the following day was transported to the Green Bay Reformatory. Petitioner was received at the Reformatory on September 5, 1965. (See Exhibit H, Respondent's Reply to Petition.)

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Petitioner was never afforded a hearing either by the State Department of Public Welfare or by the sentencing Court prior to the revocation of his probation and transportation to the Green Bay Reformatory. Further he was never granted a hearing of any kind in Illinois after he was picked up and prior to the time he was transported to the Racine County Jail. Petitioner was also denied an opportunity to consult with a lawyer of his own choosing or appointed counsel prior to the revocation of his probation, prior to his removal from the State of Illinois to the Racine County Jail and prior to his transportation to the Green Bay Reformatory.

On June 4, 1969, petitioner was released from the custody of the State of Wisconsin and was paroled to a federal detainer. Petitioner was previously sentenced to a term of eight (8) years
48 on a federal conviction. That sentence was to be served concurrent with the sentence in the State of Wisconsin. Petitioner is presently incarcerated at the Federal Correctional Institution at Leavenworth, Kansas. His status as it relates to the State of Wisconsin is that of "parolee."

* * *

49 Dated at Milwaukee, Wisconsin this 2nd day of August, 1969.

Respectfully submitted,

GERALD H. SCARPELLI
Petitioner

BY:

SHELLOW, SHELLOW & COFFEY

/s/ William M. Coffey
WILLIAM M. COFFEY

Attorney for petitioner.

50 RESPONDENT'S AMENDMENT TO STATEMENT OF FACTS

(Filed August 19, 1969)

[Caption omitted in printing]

On the second page, the 5th line, before the first word "on" insert "in part" and strike the second word "on" so that the line will read "The recommendations for revoking probation were based in part on a".

* * *

51

Respectfully submitted,

ROBERT W. WARREN
Attorney General

/s/ Wm. A. Platz
WILLIAM A. PLATZ
Assistant Attorney General

Attorneys for Respondent

52 OPINION AND ORDER GRANTING WRIT OF HABEAS CORPUS

(Filed September 21, 1970)

This opinion and order are printed in the Appendix to the Petition for Writ of Certiorari at pages 101-114.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AFFIRMING THE JUDGMENT OF THE DISTRICT COURT

(Filed December 28, 1971)

This opinion is printed in the Appendix to the Petition for Writ of Certiorari at pages 115-125.

Supreme Court of the United States

No. 71-1225 , [redacted]

John R. Gagnon, Warden,

Petitioner,

v.

Gerald H. Scarpelli

ORDER ALLOWING CERTIORARI. Filed June 26 ---------- , 1972.

The petition herein for a writ of certiorari to the United States Court of